No. 80-1548

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980.

BRINTON ESTY, DETECTIVE EDWARD MORGAN, ROBERT GARBUS AND SERGEANT LESLIE WILLIAMS,

Petitioners,

- Against -

AURORA O'NEAL as Administratrix of Estate of TYRONE O'NEAL, Deceased,

Respondent.

Brief of Respondent AURORA O'NEAL in Opposition to the Petition for a Writ of Certiorari to the Court of Appeals for the State of New York for the Second Circuit.

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QUESTION PRESENTED.

The question involved in this case is the admission of a statement made on the telephonic communication to Detective Carrington by one of the defendants. It also involves the question as to whether or not the arresting officer Esty had a conversation with Detective Carrington.

PRELIMINARY STATEMENT.

This brief is submitted in opposition to the petition for a writ of certiorari in the Circuit Court of Appeals for the Second Circuit for review by this Court for a reversal of the judgement and the ordering of a new trial.

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STATEMENT OF THE CASE.

Far be it from the undersigned to question the statement of the case as stated in the Circuit Court of Appeals opinion.

However, I would like to point out that in the City's petition for certioari they make a statement that Mr. O'Neal was not injured and refer to the City Hospital at Elmhurst record.

They do not mention the Bellvue Hospital records, Riker's Island Hospital records which is affiliated with Montefiore Hospital, Veterans Administration Hospital records and the testimony of Dr. Jamil Abraham who all show that the plaintiff's-decedent indeed had a fractured skull and very serious and grievous injuries. This is not the place to try the

issue of damages but I just wanted to point out the unfortunate omission by my adversary of the pertinent facts.

ARGUMENT AND OPPOSITION TO THE PETITION.

It is interesting to note that the only place the petition for certiorari indicates that this case is important enough to warrant the Supreme Court opinion is in the conclusion, "The questions presented are of sufficient magnitude to warrant review by this Court."

It is respectfully submitted that this is a Rule of Evidence which traditionally have been decided by individual Circuits and does not warrant the importance of the Court entertaining the application.

It is also interesting to note that nowhere in the petition for certiorari

is the word fairness mentioned. It is interesting to note that the Circuit Court of Appeals did in fact mention that word.

It is respectfully submitted that even if this case warranted the importance of this Court ruling upon it the defendants are splitting hairs over technicalities which are within the discretion of the Circuit Court of Appeals to rule on the evidentiary rules of its district.

It does not behoove the undersigned to copy the cases and the legal reasoning of the Circuit Court of Appeals which is part of the exhibits attached to the petition for certiorari.

However, it should be pointed out that the cases cited in the section and the language in the section entitled,

Scope of Examination, Rule 611 of the Federal Rules and Evidence was not even raised below the Circuit Court of Appeals, and therefore pursuant to the cardinal rule in this Court cannot be raised at this point.

It should also be pointed out that not all the cases cited by the defendants even support his conclusion and none of them are Second Circuit of Supreme Court cases. The Judge in the Lis vs. Packer Hospital 579 F2d 819 basically held to the contrary that he would permit inquiry as to every matter beyond the scope of direct and yet the Supreme Court denied certiorari in this case. The United States vs. Russo 540 F2d 1152 cited by my adversary I failed to find anything on the issue raised by their point herein.

United States vs. Drake, 842 F2d 1020 (8th Circuit 1976) is an 8th Circuit case and deals with discretion of trial court in a criminal matter and does not involve question of admission. United States vs. Ellison 557 F2d 128 (7th Cir. 1977) is an 8th Circuit case and also involves a criminal case and does not involve a question of admission.

It is respectfully submitted that even by the petitioners statement as to questions presented or opinion of the Courts below do they indicated the question of cross-examination limits.

It is also respectfully submitted that the issue in this case is the admissibility of the admission.

It is also respectfully submitted that the line of questioning to Detective

Carrington was obviously not cross-examination.

I will not reiterate my arguments at this juncture to the Circuit Court of Appeals on their opinion as annexed hereto is quite comprehensive of the case at bar.

CONCLUSION.

It is respectfully submitted that not a case cited by petitioner except the Ybarra case which was quoted by the Circuit Court of Appeals has anything to do with the issue at hand.

It is respectfully submitted that this is not a case of importance for this Court and is a rule of evidence question to be governed by the local circuits.

It is finally respectfully sub-

mitted the Circuit Court of Appeals made an eminently fair and just decision in the case at bar, especially since the petitioners seek to hide all the salient facts of a shameful incident firstly from the jury, secondly from the Circuit Court of Appeals and now with continued outrageous and untenuous grounds, the Supreme Court of the United States.

Respectfully Submitted,

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